

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21316 of 1999

21.11.2007

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Between:

Beri Janakamma, W/o.late Apparao
And others

...Petitioners

And

The District Collector, East Godavari District at Kakinada
And another

...Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.21316 of 1999

ORDER:

Land admeasuring Acs.24.50 in survey Nos.67/3, 69/2, 74 and 43/6 situated at Rajahmundry, was acquired by the Government for public purpose, namely, "for quarrying stone" for construction of Godavari Barrage at Rajahmundry. This was done in 1975. The father of petitioners 2 to 4 and husband of first petitioner, late Apparao, was owner of the land admeasuring Acs.6.50 in survey No.69/2. Petitioners allege that after acquiring the land, 1,50,000 Cubic Metres (CMs) of road metal was extracted from petitioners' land and construction work was completed in August 1996. Late Apparao made a representation to the authorities for reconveyance of the land along with other owners. Petitioners allege that the land was reconveyed for other owners but the same was not returned to Apparao. Therefore, late Apparao filed W.P.No.2681 of 1997. The writ petition was disposed of on 20.3.1998 by this Court recording that the land was handed over to Revenue Department. Petitioners were given liberty to approach Authorities for appropriate action.

Petitioners then made a representation on 20.3.1998 requesting reconveyance, in vain. They therefore sent another reminder on 03.5.1998. In response thereto, first respondent namely District Collector, East Godavari District, sent proceedings dated 13.6.1998 informing the petitioners that the land was handed over to Municipal Authorities and that petitioners have no concern with the same. Petitioners then got issued a legal notice informing that late Apparao was permanent lessee of the land and therefore they have permanent rights over the land. They were not handed over the land and

therefore they filed the instant writ petition seeking invalidation of the proceedings of the District Collector dated 13.6.1998 and for a further direction to first respondent to handover possession of Acs.6.50 in survey No.69/2B.

Second respondent filed a counter affidavit opposing the writ petition. It is stated therein that petitioners have no right to question delivery of possession of the land to Municipal Corporation. Late Apparao filed O.S.No.652 of 1998 on the file of the Court of IV Additional Junior Civil Judge, Rajahmundry, for permanent injunction against respondents. He alleged that he is permanent lessee of the land belonging to

Sri Venugopala Swami Varu of Rajahmundry. During the pendency of suit, Apparao died and petitioners got impleaded as legal representatives. The suit was dismissed. When the land was acquired for public purpose, Government can utilize for the same purpose or can transfer to a local body for other public purpose. Petitioners are claiming reconveyance under para 32.3 of Board Standing Order (BSO) 90, which was substituted by G.O.Ms.No.783, 09.10.1998, prohibiting reconveyance of land acquired to the owners.

Learned Counsel for petitioners submits that when the land was acquired and the same remains unutilized, petitioners are entitled for reconveyance. He secondly submits that in respect of similarly situated persons land was redelivered and the same benefit is denied to petitioners. **Per contra**, learned Assistant Government Pleader for Land Acquisition submits that having regard to the case law laid down in various Supreme Court judgments, petitioners have no enforceable right to maintain the writ petition. She particularly laid emphasis on the decision of Supreme Court in **Northern Indian Glass Industries v Jaswant Singh**^[1] and **Government of A.P. v Syed Akbar**^[2].

A reading of Sections 23, 23(1)(a) and 30 of the Land Acquisition Act, 1894 (the Act, for brevity) would show that when once the land is acquired for public purpose and adequate compensation is determined by Land Acquisition Officer (LAO) and paid to owner of the land, the latter has no right again to seek reconveyance. The Award passed by LAO is in the nature of an agreement whereunder the owner agrees to part with the land accepting the determined compensation as per the market value. Even when the land acquired is not utilized for the public purpose for which it was acquired or kept vacant to be utilized for any other public purpose, the owner cannot be said to have any enforceable right to seek reconveyance. In **Koppula Narasaiah v. Govt. of A.P.**^[3], I have considered this and having regard to the law laid down by the Supreme Court in **State of Kerala v Bhaskaran**

Pillai^[4], C.Padma v Deputy Secretary to Government of Tamil Nadu^[5], State of Punjab v Sadhu Ram^[6], and Chandragauda Ramagonda Patil v State of Maharashtra^[7], I have summarized the principles as under.

- (a) The land acquired under the provisions of the Act for one public purpose, after putting it to the said public purpose partly or fully, if surplus land remains, can be utilized either partly or fully for any other public purpose;
- (b) When the land absolutely vests free from encumbrances, the same shall be treated as Government land subject to all legislations, rules and executive instructions touching upon the assignment of land for other purpose and for landless poor;
- (c) The owners of the land whose land is acquired have no right, legal entitlement or legitimate expectation in seeking reconveyance of the land at the price at which compensation was paid under the award under Section 11 of the Act;
- (d) If the Government, as a policy decides that the land acquired is not partly or fully utilized for the public purpose for which it was acquired, is no more required for any public purpose, either because it is not suitable or because it has become waste land, the Government is bound to deal the property like any other Government property and dispose of the same in the manner which sub-serves public interest. The sale of Government land by public auction or by calling for tenders and disposing of the same to the highest bidder is the most transparent and best method of sub-serving public interest;
- (e) The power of the Government to dispose of the surplus land acquired by public auction also enables to permit original land owners to participate in the public auction and offer appropriate highest bid;
- (f) In any event, any claim by the original land owners or their legal heirs for reconveying cannot be entertained after a long lapse of time, say 10 years, 20 years or 30 years.
- (g) If the Government decides to assign the surplus acquired land to landless poor persons as a measure of poverty amelioration, the method of public auction need not be adopted.

In **Northern India Glass Industries** (supra), it was held that, *“If the land was not used for the purpose for which it was acquired, it was open to the State Government to take action but that did not confer any right on the respondents to ask for restitution of the land”*. In **Syed Akbar** (supra), the Supreme Court referred to entire case law and also considered BSO 90(32) as well as amendment made to it in

G.O.Ms.No.783, dated 09.10.1998, and laid down as under.

From the position of law made clear in the aforementioned decisions, it follows that (1) under Section 16 of the Land Acquisition Act, the land acquired vests in the Government absolutely free from all encumbrances; (2) the land acquired for a public purpose could be utilized for any other public purpose; and (3) the acquired land which is vested in the Government free from all encumbrances cannot be re-assigned or re-conveyed to the original owner merely on the basis of an executive order.

Referring to BSO 90 (32) as amended by G.O.Ms.No.783, dated 09.10.1998, the Supreme Court observed as under.

In order to make a claim under para 32 of the said Board's Standing Order in the first place, it was necessary that the competent authority had subsequently relinquished the unused land. After such relinquishment of the land, the land had to be notified for sale in public auction. If at the time of sale of such land, the original owner made a claim, sale could be stopped and his claim could be investigated and thereafter the land was to be disposed of in the manner specified under the said paragraph. Added to this, by virtue of the amendment to para 32 brought about by G.O.Ms.No.783 dated 9-10-1998, the land for the public purpose shall be utilized for the same purpose for which it was acquired as far as possible and in case the land is not used for the purpose for which it was acquired due to any reason, the land shall be utilized for any other public purpose as deemed fit. It appears this amendment was not brought to the notice of the High Court.

In view of the observations made in **Syed Akbar** (supra), reliance placed by learned Counsel for petitioners in G.O.Ms.No.783, is misconceived. As laid down, even if the land is not utilized for any other public purpose and under no circumstances, it can be reassigned merely on the basis of an executive order.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO, J)

November 21, 2007
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[1] (2003)1 SCC 335

[2] (2005)1 SCC 558 = AIR 2005 SC 492

[3] 2000(6) ALT 337 = 2000(6) ALD 299

[4] AIR 1997 SC 2703

[5] (1997) 2 SCC 627

[\[6\]](#) (1997) 9 SCC 544

[\[7\]](#) (1996) 6 SCC 405